

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY TYRONE FOSTER,

Plaintiff,

v.

KAWEAH DELTA MEDICAL CENTER;
KENNY DERKANG LEE,

Defendant.

Case No. 1:21-cv-01044-JLT-HBK (PC)

ORDER GRANTING PLAINTIFF'S
CONSTRUED MOTION FOR
CLARIFICATION AND DIRECTING CLERK
TO MODIFY DOCKET NO. 33

(Doc. No. 41)

Pending before the Court is Plaintiff's notice and addendum to declaration, filed on June 8 and June 13, 2022, respectively. (Doc. Nos. 41, 42). The notice, written as a letter to the Clerk, is construed as a motion for clarification because Plaintiff seeks clarification concerning language in the Court's May 16, 2022 order. Plaintiff states he is confused, specifically regarding the Court permitting Plaintiff an opportunity to file a response to Defendant's amended motion for summary judgment. (Doc. No. 41 at 1). Plaintiff states he responded to Defendants' summary judgment motion and doesn't understand why the Court permitted him until June 13, 2022 to file a response to the summary judgment motion. (*Id.* at 2). Notably, a few days after filing the notice, on June 13, 2022, Plaintiff filed an "'addendum' to declaration of Plaintiff Ricky Tyrone Foster in opposition to Defendants' cross-motion for summary judgment" and on pages three through six of the pleading incorporates his "memorandum and points of authorities" in apparent opposition to Defendants' cross-motion for summary judgment. (*See generally* Doc. No. 42).

1 Addressing the construed motion for clarification, the May 16, 2022 Order denied
2 Plaintiff's motion for reconsideration, but permitted Plaintiff until June 13, 2022 to file a response
3 to Defendants' amended cross motion for summary judgment. (Doc. No. 40). The Order noted
4 that Plaintiff stated he received the Court's November 29, 2021 order on January 3, 2022, which
5 was *after* the deadline the court initially permitted him to respond to the Defendant's cross-
6 motion for summary judgment. As previously indicated, Plaintiff filed a declaration and
7 memorandum/points of authorities to the cross-motion for summary judgment. (Doc. No. 42).

8 A review of the docket confirms Plaintiff's motion for summary judgment, which was
9 filed on July 19, 2021, remains pending. (Doc. No. 5). Defendants opposed Plaintiff's motion on
10 September 15, 2021. (Doc. Nos. 10, 11).¹ Defendants' cross motion for summary judgment
11 containing the *Rand* notice, filed October 1, 2021, also remains pending the Court's review.
12 (Doc. Nos. 23, 25, 26). Significantly, until Plaintiff's filing dated June 13, 2022 in opposition to
13 Defendants' cross-motion for summary judgment the Court had not received any opposition from
14 Plaintiff. Notably, Defendant Kaweah Health Care District filed a notice dated November 23,
15 2021 that they received Plaintiff's "Separate Statement of Undisputed Material Facts in
16 Opposition to the Defendants' Motion for Summary Judgment," but noted the document was not
17 yet filed on the docket. (*See* Doc. No. 33 at 1). Defendant incorporated Plaintiff's undisputed
18 material facts chart within their Reply. (*Id.* at 2-24). Upon review, the Court confirms Plaintiff's
19 Separate Statement of Undisputed Material Facts from November 2021 was not received or
20 docketed, but appears incorporated in Defendants' Reply. For clarity purposes, the Court will
21 direct the Clerk to edit the docket entry to reflect the title of the pleading as opposed to what the
22 docket currently reads "Defendants Kaweah Delta Health Care District and Kenny Derkang Lee,
23 M.D.'s Reply to Plaintiff's 'Statement of Disputed and Undisputed Facts In Opposition to
24 Defendant's Separate Statement of Undisputed and Material Facts In support of Defendant's
25 cross motion for summary judgment.'" (Doc. No. 33).

26 Finally, to the extent Plaintiff seeks clarification due to the Court referring to the

27 _____
28 ¹ It appears Defendants filed a duplicative opposition and declaration in support on October 1, 2021. (Doc. Nos. 21, 22).

Defendants' motion as an "amended" motion, as previously noted, Defendants did not label the motion "amended," but the Court construed it as a such. (*See* Doc. Nos. 37, 39).

Accordingly, it is **ORDERED**:

1. Plaintiff's motion for clarification is **granted** to the extent clarification is provided herein and otherwise **denied**.

2. Docket number 33 that currently reads "objections by Defendants" shall be modified to read "Defendants' Defendants Kaweah Delta Health Care District and Kenny Derkang Lee, M.D.'s Reply to Plaintiff's Statement of Disputed and Undisputed Facts In Opposition to Defendant's Separate Statement of Undisputed and Material Facts In support of Defendant's cross motion for summary judgment" so that the Court considers the document when reviewing the Defendants' cross-motion for summary judgment and Plaintiff's opposition thereto. (Doc. No. 33).

3. The Court deems both Plaintiff's motion for summary judgment (Doc. No. 5) and Defendants' cross-motion for summary judgement (Doc. No. 23) submitted and ripe for review on the record.

Dated: June 15, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE